

Countryman, Ryan

From: Tom McCormick <tommccormick@mac.com>
Sent: Wednesday, February 12, 2020 1:38 PM
To: MacCready, Paul; Countryman, Ryan
Cc: Mock, Barb; McCrary, Mike; Dobesh, Michael; Otten, Matthew; Klein, Ken
Subject: Problems with BSRE's plans for the pier at Point Wells

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Paul and Ryan:

In BSRE's Dec. 12, 2019 summary of revisions, it states that "The Land Use Application is updated to include request for a conditional use permit on the pier to operate passenger-only ferry service." Page 16 of the revised 2019 Project Narrative discusses the pier as follows:

"The pier is built on State of Washington-owned tidelands and leased to BSRE under an aquatics Lands Lease between Washington State Department of Natural Resources and Chevron U.S.A. Inc. The pier is not subject to the Urban Center code. The Urban Center Plan proposed redevelopment of the pier will focus on rehabilitation of existing structures, and uses will be limited to water-oriented public recreation opportunities. This limited pier redevelopment will address potential view impact concerns and additional shadow impacts on the water that could adversely impact endangered salmon fingerlings, and overall aesthetics."

The County should reject BSRE's pier redevelopment efforts. Consider the following:

— Any BSRE proposal to redevelop the pier must be rejected because there is no evidence of BSRE's ownership or control of the pier. If BSRE has an ownership interest, or lease rights or other rights to develop the pier, it must produce documentation proving it.

— BSRE mentions in the Dec. 12, 2019 Project Narrative that the aquatics Lands Lease between Washington State Department of Natural Resources (DNR) and Chevron U.S.A. Inc. That lease expired July 31, 2019. Further, BSRE is not a party to the expired lease.

— A new lease between DNR and the current oil company (Paramount, a unit of Delek) is in the process of being finalized. BSRE sought to insert itself in the negotiations for the new lease; for example, it objected to Paramount's request for an early termination clause in the new lease. In response, an Oct. 30, 2019 email from Paramount's attorney to DNR says this:

"Legal counsel for BSRE recently copied you on a letter that was sent to me objecting to Paramount's request for an early termination clause. The letter wrongly asserts that such a clause violates an agreement between BSRE and Paramount. We disagree with BSRE and have responded to them by separate letter. I chose not to copy you on the response because this is a matter between BSRE and Paramount. Paramount's request for the early termination clause stands, as last submitted, and we appreciate DNR's consideration of this request."

DNR concluded that BSRE had no right to insert itself in the negotiations for the new lease, saying in an internal DNR email dated Oct. 31, 2019, "With due respect for BSRE, we have only privity of contract with Paramount so we actually have no choice but to proceed with Paramount only."

BSRE eventually withdrew its objection to the early termination clause (Nov. 29, 2019 email to DNR), but requested advance notice if early termination were to occur:

"we ask that Paramount and DNR add a provision that provides for contemporaneous notice to BSRE in the event Paramount elects the early termination to ensure that BSRE has the option to protect its interests in the lease by exercising its assignment right prior to the commencement of decommissioning the dock.

If for some reason the parties to the lease renewal are not inclined to add that notice provision to the lease, BSRE still supports and the prompt execution of the lease renewal. Nonetheless, please understand that it is BSRE's view that to ensure its rights under Section 9.7 of the purchase agreement are protected (and in accordance with Paramount's obligations thereunder), reasonably contemporaneous notice should be given to BSRE of an early termination notice from Paramount to the DNR no matter whether such notice is required under the lease renewal."

As stated above, there is no evidence that BSRE has any ownership or other rights regarding the pier. BSRE might claim that it does, but that is not good enough. Recall what Paramount's counsel said to the DNR: "[BSRE's] letter wrongly asserts that [an early termination] clause violates an agreement between BSRE and Paramount." BSRE may assert an interest in the pier, but in the absence of supporting documents, its assertions are without merit. It is also noteworthy that per SEC filings, the lease and development agreement between BSRE and Paramount will expire in June 2020. What happens then? The County must require BSRE to produce documents proving that BSRE owns rights to the pier—rights that continue beyond June 2020.

— What about BSRE's passenger-only ferry idea? A passenger-only ferry service does not constitute high capacity transit as defined in the 2011 version of the County Code to which BSRE vested. Any attempt by BSRE to use its dream of a passenger-only ferry service to satisfy the high capacity transit condition under SCC 30.34A.040(1) to achieve approval of building heights greater than 90 feet must be rejected (the Hearing Examiner already rejected it). Further, a passenger-only ferry service is not allowed under either the expired lease between DNR and Chevron, or the new lease being finalized between DNR and Paramount. A bald dream of a passenger-only ferry service without more is meaningless. BSRE has not produced any documentation showing that it has a right to operate a passenger-only ferry service at Point Wells, nor that it has reached agreements with the DNR and all other relevant jurisdictions.

— BSRE says that "The pier is not subject to the Urban Center code." How can this be? The easterly portion of the pier is located on land owned by BSRE that is zoned Urban Center per BSRE's 2011 vesting. Being located on BSRE-owned land, the pier is subject to the Urban Center code, and BSRE must show that its plans for the pier comply with the code. The foregoing assumes, contrary to the existing record, that BSRE has ownership or control of the pier. If it does not, then any BSRE proposal to redevelop the pier must of course be rejected.

Please enter this email into the record in opposition to BSRE's request for a variance from the 90-foot maximum building height.

Thank you.

Tom McCormick